

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

RICHARD T. DORMAN,

Petitioner,

v.

THE ATTORNEY GENERAL OF
THE STATE OF ALABAMA,

Respondent.

CIVIL ACTION NO. 03-G-0866-NE

ENTERED
DEC 18 2003

MEMORANDUM OPINION

The petitioner is serving a lengthy federal sentence in Texas.¹ He presently is challenging the fact that there is an outstanding burglary charge against him in the District Court of Cullman County, Alabama. (Doc. 1). He alleges that the failure of the state authorities to prosecute him on the charge has violated his Sixth Amendment right to a speedy trial. The magistrate judge assigned this matter required the respondent to file an answer to the petitioner's allegations. The respondent filed an answer in the form of a motion to dismiss the present petition for lack of jurisdiction because there is no pending detainer. (Doc. 6). The magistrate judge entered a report and recommendation, finding that the petitioner is not entitled to any relief and the petition is due to be dismissed. (Doc. 9). The petitioner has responded that although there may be no detainer, the failure of the state authorities to efficiently dispose of the burglary charge warrants dismissal of the same. (Doc. 10).

The court has considered the entire file in this action together with the Magistrate Judge's Report and Recommendation and the objections of the petitioner and has reached an independent

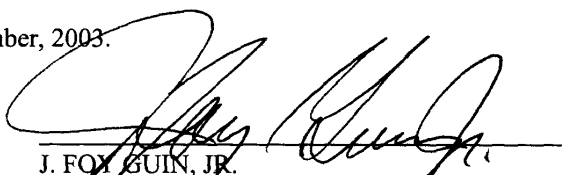
¹ According to the petitioner he was "sentenced to 'life plus 30 years plus 30 years'" on the charges of conspiracy to commit murder for hire and two counts of bank fraud. (Doc. 1 at ¶¶ 1 & 5).

conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. Although there may be an outstanding state charge against the defendant in Cullman County, there is no detainer that impacts his present custodial situation. The petitioner, therefore, is not in custody for purposes of the habeas corpus statute. *See* 28 U.S.C. §§ 2254(a) & (d). Accordingly, this court is without jurisdiction to grant the petitioner the requested relief.

The court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of the court. Accordingly, this petition for writ of habeas corpus is due to be denied and dismissed without prejudice.²

An appropriate order will be entered.

DONE, this 18th day of December, 2003.


J. FOX GUIN, JR.
SENIOR UNITED STATES DISTRICT JUDGE

² If the petitioner is returned to Alabama to answer the burglary charge, he will be able to raise the speedy trial issue in the state courts at that juncture. If he is denied relief after exhausting his state remedies, he would then be able to proceed in federal court under the habeas corpus provisions.